

MONTANA LEGISLATIVE HISTORY

Chapter 91 1999

Bill H 24 S _____

Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 1-15 ☒ C

1-25 ☒ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3-4 ☒ C

3-8 ☒ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILL NO. 24

INTRODUCED BY SOFT L

BY REQUEST OF THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE UNIFORM CHILD CUSTODY JURISDICTION ACT WITH THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; AMENDING SECTIONS 40-1-105, 40-4-103, 40-7-101, 40-7-103, 40-7-105, 40-7-106, 40-7-107, 40-7-108, 40-7-109, 40-7-110, 40-7-112, 40-7-119, AND 40-7-125, MCA; AND REPEALING SECTIONS 40-7-102, 40-7-104, 40-7-111, 40-7-113, 40-7-114, 40-7-115, 40-7-116, 40-7-117, 40-7-118, 40-7-120, 40-7-121, 40-7-122, 40-7-123, AND 40-7-124, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-1-105, MCA, is amended to read:

"40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage must be entitled, "In re the Marriage of..... and.....". A parenting or support proceeding must be entitled, "In re the (parenting) (support) of.....".

(3) The initial pleading in all proceedings under this chapter must be denominated a petition. A responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

Section 2. Section 40-4-103, MCA, is amended to read:

"40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings ~~coming~~ under the Uniform Child Custody Jurisdiction and Enforcement Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation must be entitled, "In re the Marriage of..... and.....". A parenting or support proceeding must be entitled, "In re the (parenting) (support) of.....".

(3) The initial pleading in all proceedings under this chapter must be denominated a petition. A responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, may not be awarded to one of the parties but must provide that it affects the status previously existing between the parties in the manner decreed."

Section 3. Section 40-7-101, MCA, is amended to read:

"40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act"."

Section 4. Section 40-7-103, MCA, is amended to read:

"40-7-103. Definitions. As used in this chapter, the following definitions apply:

~~(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.~~

~~—— (2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.~~

~~—— (3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.~~

~~—— (4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.~~

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) (a) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, a temporary, an initial, and a modification order.

(b) The term does not include an order relating to child support or other monetary obligation of an individual.

(4) (a) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or

visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

(b) The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [sections 25 through 41].

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(5)(7) "Home state" means the state in which the a child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months immediately before the commencement of a child custody proceeding, and in In the case of a child less than 6 months old of age, the term means the state in which the child lived from birth with any of the persons mentioned. Periods A period of temporary absence of any of the named mentioned persons are counted as is part of the 6-month or other period.

(6)(8) "Initial decree" "Initial determination" means the first custody decree child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(7)(11) "Modification decree" means a custody decree which modifies or child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, a prior decree, whether or not it is made by the court which rendered the prior decree or by another court that made the previous determination.

(12) "Person" includes a government, a governmental subdivision, an agency, an instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within 1 year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

~~(8)(14)~~ "Physical custody" means ~~actual possession and control~~ the physical care and supervision of a child.

~~(9)~~ "Person acting as parent" means ~~a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.~~

~~(10)(15)~~ "State" means ~~any a state of the United States, territory, or possession of the United States; the Commonwealth of Puerto Rico, and the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.~~

~~(16)~~ "Tribe" means an Indian tribe or band or Alaskan Native village that is recognized by federal law or formally acknowledged by a state.

~~(17)~~ "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child."

Section 5. Section 40-7-105, MCA, is amended to read:

"40-7-105. Notice and -- opportunity to be heard -- joinder. ~~(1)~~ Before making a decree a child custody determination is made under this chapter, ~~reasonable~~ notice and opportunity to be heard ~~shall in accordance with the standards of 40-7-106 must~~ be given to ~~the contestants~~ all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. ~~If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.~~

~~(2)~~ This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

~~(3)~~ The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state."

Section 6. Section 40-7-106, MCA, is amended to read:

"40-7-106. Notice to persons outside this state -- submission to jurisdiction. (1) Notice required for the exercise of jurisdiction ~~over~~ when a person is outside this state ~~shall~~ may be given in a manner ~~reasonably calculated to give actual notice and may be:~~

~~— (a) by personal delivery outside this state in the manner prescribed for service of process within this~~

state;

~~_____ (b) in the manner prescribed by the law of this state for the service of process or by the law of the place state in which the service is made, for service of process in that place in an action in any of its courts of general jurisdiction;~~

~~_____ (c) by any form of mail addressed to the person to be served and requesting a receipt; or~~

~~_____ (d) as directed by the court, including Notice must be given in a manner reasonably calculated to give actual notice but may be by publication, if other means of notification are ineffective.~~

~~(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.~~

~~_____ (3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or by the law of the place state in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.~~

~~(4)(3) Notice is not required if for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court."~~

Section 7. Section 40-7-107, MCA, is amended to read:

"40-7-107. Simultaneous proceedings in other states. (1) ~~A~~ Except as otherwise provided in [section 24], a court of this state may not exercise its jurisdiction under this chapter 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 23] if at the time of filing the petition commencement of the proceeding a proceeding concerning the custody of the child was pending had been previously commenced in a court of another state exercising having jurisdiction substantially in conformity with this chapter unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more appropriate convenient forum or for other reasons under 40-7-108.

(2) ~~Before~~ Except as otherwise provided in [section 24], a court of this state, before hearing the petition in a custody a child custody proceeding, the court shall examine the pleadings court documents and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states pursuant to 40-7-110. If the court has reason to believe that proceedings may be pending determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this chapter, it the court of this state shall direct an inquiry to the state court

~~administrator or other appropriate official of the other state.~~

~~—— (3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the its proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.~~

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) enjoin the parties from continuing with the proceeding for enforcement; or

(c) proceed with the modification under conditions that it considers appropriate."

Section 8. Section 40-7-108, MCA, is amended to read:

"40-7-108. Inconvenient forum. (1) A court ~~which of this state that~~ has jurisdiction under this chapter to make an initial or modification decree a child custody determination may decline to exercise its jurisdiction ~~at any time before making a decree if it finds~~ determines that it is an inconvenient forum ~~to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum. The issue~~

~~—— (2) A finding of inconvenient forum may be made~~ raised upon the court's own motion, request of another court, or upon motion of a party or a guardian ad litem or other representative of the child.

~~(3)(2) In~~ Before determining if whether it is an inconvenient forum, ~~the a court of this state shall consider if whether it is in the interest of the child appropriate that a court of another state assume exercise jurisdiction. For this purpose, it may take into account the following the court shall allow the parties to submit information and shall consider all relevant factors, among others including:~~

- ~~(a) if another state is or recently was the child's home state;~~
- ~~———— (b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;~~
- ~~———— (c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;~~
- ~~———— (d) if the parties have agreed on another forum which is no less appropriate; and~~
- ~~———— (e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.~~

(a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) the length of time that the child has resided outside this state;

(c) the distance between the court in this state and the court in the state that would assume jurisdiction;

(d) the relative financial circumstances of the parties;

(e) any agreement of the parties as to which state should assume jurisdiction;

(f) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) the familiarity of the court of each state with the facts and issues in the pending litigation.

~~(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.~~

~~(5)(3) If the a court finds of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may shall stay the proceedings upon condition that a custody child custody proceeding be promptly commenced in another named designated state or upon and may impose any other conditions which may be condition that the court considers just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.~~

~~(6)(4) The A court of this state may decline to exercise its jurisdiction under this chapter if a custody~~

child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

~~(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.~~

~~—— (8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.~~

~~—— (9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact."~~

Section 9. Section 40-7-109, MCA, is amended to read:

"40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree ~~has wrongfully taken the child from another state or~~ Except as otherwise provided in [section 22], if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in similar reprehensible unjustifiable conduct, the court ~~may shall~~ decline to exercise jurisdiction if ~~this is just and proper under the circumstances unless:~~

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under [sections 19 through 21] determines that this state is a more appropriate forum under 40-7-108; or

(c) no other state would have jurisdiction under [sections 21 through 23].

~~(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.~~

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1), it may

fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under [sections 21 through 23].

(3) ~~In appropriate cases~~ If a court dismissing a petition under this section may dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1), it shall charge the petitioner party invoking the jurisdiction of the court with necessary travel and other reasonable expenses, including attorneys' fees, incurred by other parties or their costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter."

Section 10. Section 40-7-110, MCA, is amended to read:

"40-7-110. Information under oath to be submitted to the court. (1) Each In a child custody proceeding, each party, in a custody proceeding in his its first pleading or in an attached affidavit, attached to that pleading shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived within during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this The pleading or affidavit each party shall further declare under oath must state whether the party:

(a) he has participated, (as a party; or witness; or in any other capacity), in any other litigation proceeding concerning the custody of or visitation with the same child in this or any other state and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;

(b) he has information knows of any custody proceeding concerning the child pending in a court of this or any other state that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) he knows the name and address of any person who is not a party to the proceedings proceeding who has physical custody of the child or who claims to have rights of legal custody or physical custody of, or visitation rights with respect to, the child and, if so, the party shall provide the names and addresses of those persons.

(2) If the information required by subsection (1) is not furnished, the court, upon motion of a party or

its own motion, may stay the proceeding until the information is furnished.

~~(2)(3)~~ If the declaration as to any of the ~~above~~ items described in subsections (1)(a) through (1)(c) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and ~~as to~~ other matters pertinent to the court's jurisdiction and the disposition of the case.

~~(3)(4)~~ Each party has a continuing duty to inform the court of any ~~custody proceeding concerning the~~ child in this or any other state ~~of which he obtained information during this~~ that could affect the current proceeding."

Section 11. Section 40-7-112, MCA, is amended to read:

"40-7-112. Appearance of parties and child. (1) ~~The A~~ A court of this state may order ~~any a~~ a party to the a child custody proceeding who is in this state to appear ~~personally~~ before the court personally with or without the child. ~~If that party~~ The court may order any person who is in this state and who has physical custody or control of the child; the court may order that he to appear personally physically with the child.

(2) If a party to ~~the a child custody~~ proceeding whose presence is desired by the court is outside this state ~~with or without the child~~, the court may order that ~~the a~~ notice given under pursuant to 40-7-106 include a statement directing ~~that the~~ the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to ~~that the~~ the party.

~~(3)~~ The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

~~(3)(4)~~ If a party to ~~the a child custody~~ proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay ~~to the clerk of the court travel~~ reasonable and ~~other necessary travel and other~~ expenses of the party so appearing and of the child, ~~if this is just and proper under the circumstances."~~

Section 12. Section 40-7-119, MCA, is amended to read:

"40-7-119. Taking testimony in another state. (1) In addition to other ~~procedural devices~~ procedures available to a party, ~~any a~~ a party to the a child custody proceeding ~~or a guardian ad litem or other representative of the child may adduce~~ offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or otherwise; other means allowable in this state for testimony taken in another state. The court on its own motion may direct order that the testimony of a

person be taken in another state and may prescribe the manner in which and the terms upon which the testimony ~~shall be~~ is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence that is transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission."

Section 13. Section 40-7-125, MCA, is amended to read:

"40-7-125. Priority. ~~A custody proceeding which raises~~ If a question of existence or exercise of jurisdiction under this chapter shall be raised in a child custody proceeding, the question, upon request of a party, must be given calendar priority on the calendar and handled expeditiously."

NEW SECTION. Section 14. Proceedings governed by other law. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

NEW SECTION. Section 15. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, and [sections 14 through 24].

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under [sections 25 through 41].

NEW SECTION. Section 16. International application. (1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, and [sections 14 through 24].

(2) A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under [sections 25 through 41].

(3) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

NEW SECTION. Section 17. Binding force of child custody determination. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent that the determination is modified.

NEW SECTION. Section 18. Appearance and limited immunity. (1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and who is a responding party under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], a party in a proceeding to modify a child custody determination under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], or a petitioner in a proceeding to enforce or register a child custody determination under [sections 25 through 41] may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

NEW SECTION. Section 19. Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to

participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

NEW SECTION. Section 20. Cooperation between courts -- preservation of records. (1) A court of this state may request the appropriate court of another state to:

- (a) hold an evidentiary hearing;
- (b) order a person to produce or give evidence pursuant to procedures of that state;
- (c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1).

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

NEW SECTION. Section 21. Initial child custody jurisdiction. (1) Except as otherwise provided in [section 24], a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under 40-7-108 or 40-7-109, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under subsection (1)(a) or (1)(b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under 40-7-108 or 40-7-109; or

(d) no state would have jurisdiction under subsection (1)(a), (1)(b), or (1)(c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

NEW SECTION. Section 22. Exclusive, continuing jurisdiction. (1) Except as otherwise provided in [section 24], a court of this state that has made a child custody determination consistent with [section 21 or 23] has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise jurisdiction if the court determines that it is an inconvenient forum under 40-7-108.

(3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under [section 21].

NEW SECTION. Section 23. Jurisdiction to modify determination. Except as otherwise provided in [section 24], a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under [section 21(1)(a) or (1)(b)] and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under [section 22] or that a court of this state would be a more convenient forum under 40-7-108; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

NEW SECTION. Section 24. Temporary emergency jurisdiction. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under [sections 21 through 23], a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under [sections 21 through 23]. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under [sections 21 through 23], a child custody determination made under this section becomes a final determination if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under [sections 21 through 23], any order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under [sections 21 through 23]. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or until the period expires.

(4) A court of this state that has been asked to make a child custody determination under this

section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under [sections 21 through 23], shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to [sections 21 through 23], upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, to protect the safety of the parties and the child, and to determine a period for the duration of the temporary order.

NEW SECTION. Section 25. Definitions. In [sections 25 through 41]:

(1) "Petitioner" means a person who seeks enforcement of an order for the return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

NEW SECTION. Section 26. Enforcement under Hague Convention. Under [sections 25 through 41], a court of this state may enforce an order for the return of the child that was made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

NEW SECTION. Section 27. Duty to enforce. (1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(2) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The procedure provided by [sections 25 through 41] does not affect the availability of other remedies to enforce a child custody determination.

NEW SECTION. Section 28. Temporary visitation. (1) A court of this state that does not have

jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (a) a visitation schedule made by a court of another state; or
- (b) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(2) If a court of this state makes an order under subsection (1)(b), it shall specify in the order a period of time that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24]. The order remains in effect until an order is obtained from the other court or the period expires.

NEW SECTION. Section 29. Registration of child custody determination. (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to district court in this state:

- (a) a letter or other document requesting registration;
- (b) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration, the order has not been modified; and
- (c) the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1), the registering court shall:

- (a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (b) serve notice upon the persons named pursuant to subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by subsection (2)(b) must state that:

- (a) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
- (b) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and
- (c) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20

days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24]; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

NEW SECTION. Section 30. Enforcement of registered determination. (1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], a registered child custody determination of a court of another state.

NEW SECTION. Section 31. Simultaneous proceedings. If a proceeding for enforcement under [sections 25 through 41] is commenced in a court of this state and the court determines that a proceeding to modify the determination is commenced in a court of another state having jurisdiction to modify the determination under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

NEW SECTION. Section 32. Expedited enforcement of child custody determination. (1) A petition under [sections 25 through 41] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination must state:

(a) whether the court that issued the determination identified the jurisdictional basis that it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(c) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and if so, identify the court, the case number, and the nature of the proceeding;

(d) the present physical address of the child and the respondent, if known;

(e) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) if the child custody determination has been registered and confirmed under [section 29], the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(4) The order must state the time and place of the hearing and must advise the respondent that at the hearing, the court will order the delivery of the child and the payment of fees, costs, and expenses under [section 36] and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) the child custody determination has not been registered and confirmed under [section 29] and that:

(i) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under [section 29], but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law.

NEW SECTION. Section 33. Service of petition and order. Except as otherwise provided in [section 35], the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

NEW SECTION. Section 34. Hearing and order. (1) Unless the court issues a temporary emergency order pursuant to [section 24], upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under [section 29] and that:

(i) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under [section 29], but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law.

(2) The court shall award the fees, costs, and expenses authorized under [section 36] and may grant additional relief, including a request for the assistance of law enforcement officials, and may set a further

hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under [sections 25 through 41].

NEW SECTION. Section 35. Warrant to take physical custody of child. (1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or to be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or to be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by [section 32(2)].

(3) A warrant to take physical custody of a child must:

(a) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) direct law enforcement officers to take physical custody of the child immediately; and

(c) provide for the placement of the child, pending final relief.

(4) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

NEW SECTION. Section 36. Costs, fees, and expenses. (1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

NEW SECTION. Section 37. Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24].

NEW SECTION. Section 38. Appeals. An appeal may be taken from a final order in a proceeding under [sections 25 through 41]. Unless the court enters a temporary emergency order under [section 24], the enforcing court may not stay an order enforcing a child custody determination pending appeal.

NEW SECTION. Section 39. Role of prosecutor. (1) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under [sections 25 through 41] or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (a) an existing child custody determination;
- (b) a request to do so from a court in a pending child custody proceeding;
- (c) a reasonable belief that a criminal statute has been violated; or
- (d) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A prosecutor acts on behalf of the court and may not represent any party to a child custody determination.

NEW SECTION. Section 40. Role of law enforcement. At the request of a prosecutor acting under [section 39], a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and to assist a prosecutor with responsibilities under [section 39].

NEW SECTION. Section 41. Costs and expenses. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under [section 39 or 40].

NEW SECTION. Section 42. Application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Section 43. Repealer. Sections 40-7-102, 40-7-104, 40-7-111, 40-7-113, 40-7-114, 40-7-115, 40-7-116, 40-7-117, 40-7-118, 40-7-120, 40-7-121, 40-7-122, 40-7-123, and 40-7-124, MCA, are repealed.

NEW SECTION. Section 44. Transitional provision. A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before [the effective date of this act] is governed by the law in effect at the time the motion or other request was made.

NEW SECTION. Section 45. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 46. Codification instruction. [Sections 14 through 41] are intended to be codified as an integral part of Title 40, chapter 7, and the provisions of Title 40, chapter 7, apply to [sections 14 through 41].

NEW SECTION. Section 47. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

-
- HB 16** **SPONSOR:** Pavlovich, Bob **SHORT TITLE:** Appropriate funds to Board of Crime Control for grant to Les Yother
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/14/1999
- TABLED ON:** 01/18/1999
- FINAL DISPOSITION** 03/26/1999 (H) Missed Deadline for Appropriation Bill Transmitt
-
- HB 24** **SPONSOR:** Soft, Loren **SHORT TITLE:** Adopt uniform child custody jurisdiction and enforcement act
- BY REQUEST OF:** Joint Oversight Committee On Children And Families
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/15/1999
- EXECUTIVE ACTION:** 01/25/1999 Bill Passed -- VOTE: 17 - 3
- FINAL DISPOSITION** 03/19/1999 Chapter Number Assigned
-
- HB 27** **SPONSOR:** Noennig, Mark **SHORT TITLE:** Revise procedure for unlawful detainer
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/06/1999
- EXECUTIVE ACTION:** 01/11/1999 Bill Passed -- VOTE: 19 - 0
- FINAL DISPOSITION** 04/06/1999 Chapter Number Assigned
-
- HB 28** **SPONSOR:** Noennig, Mark **SHORT TITLE:** Way of necessity procedure for historic uses
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/06/1999
- TABLED ON:** 01/19/1999
- FINAL DISPOSITION** 03/01/1999 (H) Missed Deadline for General Bill Transmittal
-
- HB 38** **SPONSOR:** Peck, Ray **SHORT TITLE:** Code commissioner bill -- to generally revise and clarify Montana Code Annotated
- BY REQUEST OF:** Code Commissioner
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/06/1999
- EXECUTIVE ACTION:** 01/07/1999 Bill Passed -- VOTE: 19 - 1
- FINAL DISPOSITION** 03/16/1999 Chapter Number Assigned
-
- HB 42** **SPONSOR:** Pavlovich, Bob **SHORT TITLE:** Revise first offense DUI penalty
- REFERRED ON:** 12/21/1998 **HEARD ON:** 01/07/1999
- TABLED ON:** 02/03/1999
- FINAL DISPOSITION** 03/01/1999 (H) Missed Deadline for General Bill Transmittal
-

HISTORY AND FINAL STATUS 1999

1/28	Committee Executive Action--Bill Passed as Amended	17	0
1/29	Committee Report--Bill Passed as Amended		
2/02	2nd Reading Passed	90	8
2/03	3rd Reading Passed	91	9
	Transmitted to Senate		
2/04	Referred to Highways and Transportation		
3/02	Hearing		
3/05	Committee Executive Action--Bill Concurred	8	3
3/06	Committee Report--Bill Concurred		
3/08	2nd Reading Concurred	50	0
3/09	3rd Reading Concurred	50	0
	Returned to House		
3/09	Sent to Enrolling		
3/10	Returned from Enrolling		
3/13	Signed by Speaker		
3/15	Signed by President		
3/15	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned		
	Chapter Number 70		
	Effective Date: 10/01/1999 - All Sections		

HB 24 Introduced by Soft

LC0068 Drafter: Petesch

Replace the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act;...

By Request of Joint Oversight Committee on Children and Families

12/03	Introduced		
12/21	Referred to Judiciary		
1/04	1st Reading		
1/15	Hearing		
1/25	Committee Executive Action--Bill Passed	17	3
1/26	Committee Report--Bill Passed		
1/30	2nd Reading Passed as Amended	87	10
2/02	3rd Reading Passed	85	11
	Transmitted to Senate		
2/03	Referred to Judiciary		
3/04	Hearing		
3/08	Committee Executive Action--Bill Concurred	8	0
3/08	Committee Report--Bill Concurred		
3/09	2nd Reading Concurred	50	0
3/10	3rd Reading Concurred	50	0
	Returned to House		
3/10	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by Speaker		
3/13	Signed by President		
3/15	Transmitted to Governor		
3/17	Signed by Governor		
3/19	Chapter Number Assigned		
	Chapter Number 91		
	Effective Date: 10/01/1999 - All Sections		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on January 15, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/15/99 HB 24, HB 135, HB 203, HB 209,
Date Posted: 1/7/99

Executive Action: HB135, Do Pass
HB180, Do Pass As Amended
HB 116, Do Pass As Amended

Chairman Robert Clark opened the meeting.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 24}

HEARING ON HB 24

Sponsor:

Rep. Soft presented HB 24.

{Tape : 1; Side : A; Approx. Time Counter : 24 - 128}

Proponents:

Joe Mazurek, Montana State Attorney General

{Tape : 1; Side : A; Approx. Time Counter : 128 - 172}

Jim Nelson, Justice and Commissioner, NCCUSL

{Tape : 1; Side : A; Approx. Time Counter : 172 - 240}

EXHIBIT(2)

(handed in out of order)

Sharon Hoff, Montana Catholic Conference

{Tape : 1; Side : A; Approx. Time Counter : 240 - 256}

Miriam Luse, Family Law Attorney

{Tape : 1; Side : A; Approx. Time Counter : 256 - 319}

Opponents

None

Informational Testimony:

Greg Petesch, Code Commissioner

{Tape : 1; Side : A; Approx. Time Counter : 319 - 362}

EXHIBIT(1)

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 362 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 129}

Closing by Sponsor:

Rep. Soft made closing statements.

{Tape : 1; Side : B; Approx. Time Counter : 129 - 188}

HEARING ON HB 135

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Rep. Cobb waived closing.

EXECUTIVE ACTION ON HB 24

Motion/Vote: REP. SOFT moved that HB 24 BE PASSED. Motion carried 17-3 with Jore, McGee, and Molnar voting no.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 84}

EXECUTIVE ACTION ON HB 209

Motion: REP. SHOCKLEY moved that HB 209 BE PASSED.

EXHIBIT(4)

Motion/Vote: REP. SHOCKLEY moved that HB 209 BE AMENDED. Motion carried 19-1 with Jore voting no.

Motion/Vote: REP. SHOCKLEY moved that HB 209 BE PASSED AS AMENDED. Motion carried 16-4 with Anderson, Curtiss, Jore, and Soft voting no.

{Tape : 2; Side : B; Approx. Time Counter : 84 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 95}

EXECUTIVE ACTION ON HB 233

Motion/Vote: REP. YOUNKIN moved that HB 233 DO PASS. Motion carried 18-2 with Clark and Jore voting no.

{Tape : 3; Side : A; Approx. Time Counter : 95 - 256}

EXECUTIVE ACTION ON HB 251

Motion: REP. JORE moved that HB 251 BE PASSED.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

-
- HB 24** **SPONSOR:** Soft, Loren **SHORT TITLE:** Adopt uniform child custody jurisdiction and enforcement act
 BY REQUEST OF: Joint Oversight Committee On Children And Families
 REFERRED ON: 02/03/1999 **HEARD ON:** 03/04/1999
 EXECUTIVE ACTION: 03/08/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-
- HB 27** **SPONSOR:** Noennig, Mark **SHORT TITLE:** Revise procedure for unlawful detainer
 REFERRED ON: 01/27/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/16/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- HB 38** **SPONSOR:** Peck, Ray **SHORT TITLE:** Code commissioner bill -- to generally revise and clarify Montana Code Annotated
 BY REQUEST OF: Code Commissioner
 REFERRED ON: 01/27/1999 **HEARD ON:** 03/02/1999
 EXECUTIVE ACTION: 03/02/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 03/16/1999 Chapter Number Assigned
-
- HB 41** **SPONSOR:** Hagener, Toni **SHORT TITLE:** Extend surcharge for funding court information technology
 BY REQUEST OF: Supreme Court
 REFERRED ON: 01/27/1999 **HEARD ON:** 02/09/1999
 EXECUTIVE ACTION: 03/02/1999 Bill Concurred as Amended -- VOTE: 9 - 0
 TABLED ON: 02/15/1999
 FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- HB 48** **SPONSOR:** McGee, Dan **SHORT TITLE:** Revise and clarify certain sentence-related criminal procedures
 BY REQUEST OF: Correctional Standards And Oversight Committee
 REFERRED ON: 01/27/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 03/16/1999 Chapter Number Assigned
-
- HB 53** **SPONSOR:** Clark, Robert **SHORT TITLE:** Specify that a coroner (or deputy)shall pronounce the death at execution
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 01/28/1999 **HEARD ON:** 03/09/1999
 EXECUTIVE ACTION: 03/17/1999 Bill Concurred as Amended -- VOTE: 8 - 0
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 4, 1999
at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 24, HB 176, HB 310,
3/1/1999
Executive Action: HB 116, HB 176

HEARING ON HB 24

Sponsor: REP. LOREN SOFT, HD 12, Billings

Proponents: Joe Mazurek, National Conference of Commissioners
on Uniform State Laws
Justice James C. Nelson, National Conference of
Commissioners on Uniform State Laws

Greg Petesch, National Conference of Commissioners
on Uniform State Laws
Sharon Hoff, Montana Catholic Conference

Opponents: None

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, introduced HB 24. He explained that in 1968 the Uniform Child Custody Jurisdiction Act (UCCJA) was promulgated. By 1981, every state in the country had adopted this uniform act. The primary focus was to address the issue where non-custodial parents would be taking children across state lines in hopes of finding a sympathetic court that might be willing to reverse an unfavorable custody order. The Parental Kidnaping Prevention Act (PKPA) was also passed in 1981.

The UCCJA did not give first priority to the home state of the child when determining which state exercises jurisdiction in a child custody dispute. The PKPA provided that once a state has exercised jurisdiction, that jurisdiction remains the continuing and exclusive jurisdiction of that state until every party to the dispute has left that state. Neither act clearly addressed the problem of interstate enforcement of custody orders. This bill reconciles the core principles of the UCCJA with the PKPA and also adds the interstate civil enforcements for child custody orders.

On page 3, Section 2 updates and clarifies the home state provisions. This establishes that the home state is the best jurisdictional ground and should always be the priority ground in child custody situations.

On page 14, Section 21 establishes the parameters for the initial child custody jurisdiction. The home state is where the child was at the beginning of the proceeding or was the home state within six months before the beginning of the proceeding.

On page 15, Section 22 establishes exclusive continuing jurisdiction. The state which makes the initial custody determination has continuing jurisdiction as long as a party to the original jurisdiction remains in that state.

On page 16, Section 24 clarifies the temporary emergency jurisdiction. This allows the court, which may not be the home state, to take jurisdiction of the child in that state if he has been abandoned, or if it is necessary to protect the child or a sibling or the parent of the child, or if they are subjected to or threatened with mistreatment or abuse.

On pages 17-18, Sections 27 and 28 require the state to enforce the custody or visitation order from another state that substantially conforms with this act. This addresses the problem of interstate jurisdiction with regard to custody orders.

On page 22, Section 35 states that if there is a danger to the child or it appears that the child may be removed from the enforcing jurisdiction or that the child may be harmed, a warrant to take physical custody of the child is available.

This act has been adopted by Alaska and Oklahoma. Currently 22 states, including Montana, are considering the adoption of this act.

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

Proponents' Testimony:

Joe Mazurek, National Conference of Commissioners on Uniform State Laws, remarked that this act establishes a priority for the home state to have jurisdiction for the continuity of any issues relating to custody. It also provides for interstate enforcement allowing for judgments from this state to be registered and enforced in other states and given full faith and credit under the Constitution. He provided a summary of the Uniform Child Custody Jurisdiction and Enforcement Act, EXHIBIT(1).

Justice James C. Nelson, National Conference of Commissioners on Uniform State Laws, presented his written testimony, EXHIBIT(2).

Greg Petesch, National Conference of Commissioners on Uniform State Laws, emphasized that for the first time, visitation proceedings are defined as a child custody proceeding under this act. This bill does not determine who has custody of a child but simply addresses which court has jurisdiction to make those determinations. Also, under the Indian Child Welfare Act, this bill specifically recognizes that tribal courts have original jurisdiction in certain proceedings involving Indian children. It also allows those Tribal Court determinations of custody to be enforced in the same way that another state court custody determination would be enforced.

The bill also requires that when someone in another state files, the courts communicate with each other to make sure that the orders are not competing and that the home state priority is maintained until such time as an agreement is entered into by the courts that another court is the most appropriate court at that point in time.

Sharon Hoff, Montana Catholic Conference, related that her organization embraces a policy of children as a first priority. Parenting should be a partnership between mom and dad, but that doesn't always happen. She further remarked that she has a son who has two children. The family was living in Florida when the marriage ended. There was a joint custody agreement. She has not been able to access those children for five years. Uniform and clarified laws will help families in these situations.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 9.25}

Questions from Committee Members and Responses:

SEN. GRIMES commented that the family law approach involves parenting plans which do away with custody issues. **Mr. Petesch** clarified that at the time the dissolution of marriage laws were modified to replace the concepts of custody and visitation with parenting and parental contact, the UCCJA was not amended. The reason is that most states still use the terms "custody" and "visitation". Those concepts were carried forward in that existing body of law that determines which court has the jurisdiction on that matter. The definitions of custody and visitation in this bill are carried forward. Once it is determined that Montana is the home state, for purposes of jurisdiction over the dissolution or the parenting plan, then the Montana court would apply those dissolution concepts in making a determination of which parent the child would reside with and how often parental contact would occur with the non-residential parent.

SEN. GRIMES remarked that some custody determinations would still be made by judges. **Mr. Petesch** explained that when the court takes jurisdiction, a determination of the parenting plan is made. The only time that custody would be involved would be in enforcing an order from another state. The terms and concepts were left in the bill for interstate enforcement purposes.

SEN. BARTLETT remarked that one advantage of the bill is that it requires courts in different states to communicate with each other when circumstances required the same. She questioned if this would only apply when the other state has adopted the uniform law. **Mr. Petesch** responded that this bill provides for communication by the states that have adopted the same. The UCCJA had been adopted by every state. There is a transition provision in the bill that allows for these enforcement orders under the law that was in effect at the time that the proceeding began.

SEN. BARTLETT questioned the exceptional circumstance in which neither parent has spent six consecutive months in the same state immediately before the commencement of a child custody proceeding. **Mr. Petesch** explained that in the event that there is no home state, the place where the child is located is considered to be the most appropriate forum. If all the parties have left the home state, that home state can relinquish jurisdiction to the more appropriate forum.

SEN. GRIMES questioned whether the agreement between the two parents regarding visitation rights would be affected if one parent were to move to another state. **Mr. Petesch** affirmed that there would be no change in the agreement if one parent moved to another state.

SEN. GRIMES referred to page 16 of the bill, which addressed temporary emergency intervention, and questioned if in the instance of threatened mistreatment or abuse, the state could take jurisdiction and declare a custody issue. **Mr. Petesch** responded that this section was designed to allow emergency protection of the child. The order is of limited duration. This is designed to implement the Violence Against Women Act, which allows a parent or child who has been harmed or is threatened with harm to seek the emergency protection of the court so that the court can step in to prevent the abuser from taking the child or harming the custodial parent.

SEN. GRIMES added that in another bill this session the wording "serious harmful endangerment" has been a major source of anxiety between members of the Family Law Section of the Montana Bar Association. **Mr. Petesch** responded that this section would only determine which court would have authority to act.

CHAIRMAN GROSFIELD remarked that on page 18, Section 29 stated that a child custody determination issued by a court in another state "may" be registered in this state. He questioned how this would work in practice. **Justice Nelson** explained that the import of the registration provisions is to make it procedurally simpler for a person with an order from another state to be able to have it enforced in this state. To have an out-of-state order enforced in this state, it is necessary to go into court and file another proceeding to have the Montana court take notice of the order and to enforce it under the procedures of full faith and credit. Under the Foreign Interstate Enforcement and Support Act, there is a simplified registration procedure where a certified copy of the out-of-state order can be taken to the clerk of the court, notice is given, demonstration is made that the order is valid in another state, and then enforcement is provided. If the other party has some legitimate reason for contesting that order, the court will need to make a

determination. If the court determines that the foreign court did not have jurisdiction to issue the order, this court would not be obligated to enforce the order.

{Tape : 1; Side : A; Approx. Time Counter : 9.43}

Closing by Sponsor:

REP. SOFT remarked that a recent study showed that at over 350,000 children were abducted by parents or family members and about half of those children were taken across state lines looking for a different decision on a child custody issue.

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

HEARING ON HB 176

Sponsor: REP. ERNEST BERGSAGEL, HD 95, Malta

Proponents: Matt Robertson, Department of Corrections

Opponents: None

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, Malta, introduced HB 176. He explained that the interim committee which reviewed the correctional systems, became aware of a requirement that records for juveniles need to be sealed. As a result, their ability to develop statistical reporting is not available. This reporting is necessary to determine the best places to invest funds and programs for juveniles. The language states that any identifying factors will be removed from the records allowing for statistical information on juveniles.

Proponents' Testimony:

Matt Robertson, Department of Corrections, rose in support of HB 176. He added that it will help with population projections.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked for more clarification of the proposed automatic recording process. REP. BERGSAGEL explained that there is a requirement that all the records for the CAP system be purged from the system. This would leave the physical documents that would be sealed in the local courthouse. He is only

CHAIRMAN GROSFIELD questioned whether the form would change to allow for the additional value of the entire state as provided by federal tax code. Ms. Lane remarked that the form was not being enacted by the legislation.

Vote: Motion carried unanimously -8-0.

EXECUTIVE ACTION ON HB 94

Motion/Vote: SEN. HALLIGAN moved that HB 94 BE CONCURRED IN.
Motion carried unanimously - 8-0.

EXECUTIVE ACTION ON HB 24

SEN. HALLIGAN remarked that he has received calls from an irate parent from out-of-state who is not able to contact a child. When a party tries to get jurisdiction in Montana, this makes sure that the home state remains the jurisdiction for the case unless abuse and neglect are involved. This gives the law some definitions so that the children are not used as pawns in the process.

Motion/Vote: SEN. HALLIGAN moved that HB 24 BE CONCURRED IN.
Motion carried unanimously - 8-0.

**Testimony of Hon. James C. Nelson
Justice and Commissioner, NCCUSL
in support of HB 24
January 15, 1998**

EXHIBIT 2
DATE 1/15/99
VOL. 24

Mr. Chairman and members of the Committee:

I urge your support of HB 24 and your favorable recommendation for the enactment of The Uniform Child Custody Jurisdiction and Enforcement Act. As indicated by Rep. Soft, this bill will make important and necessary amendments to Montana's present Uniform Child Custody Jurisdiction Act, a uniform law that is now in force in all 50 states. However, the new Act goes much further than simply updating the UCCJA. Rather, as stated by Rep. Soft, the amendments contain provisions for the enforcement of custody orders, an issue not addressed in the original act, and the new Act eliminates differences between the uniform act and the federal Parental Kidnaping Prevention Act.

The importance of these amendments is highlighted by the problem which the original Act and this Act seek to resolve or prevent altogether. Each year in this Country hundreds of thousands of children are abducted by parents or family members and are concealed for the purpose of avoiding lawful custody and visitation orders and preventing contact with the other parent. A substantial number of these abductions cross state lines and often the abducting parent or family member takes the child to another jurisdiction in hopes of finding a more favorable forum in which to modify and eliminate the custody and visitation obligations imposed by the court in the child's home state. These cross-state, multi-jurisdiction abductions and court battles between parents and courts make it extremely difficult and extremely expensive for a parent to enforce a valid custody or visitation order in a foreign jurisdiction. Moreover, the stability of the family life and the education of the child, not to mention the life and work of at least one parent is completely disrupted. Often the child is placed in physical danger of abuse and neglect. Finally, from a judicial perspective, the courts, trying to sort out the various jurisdictional requirements of the present Act, have developed a body of inconsistent and often conflicting case law interpreting the Act, in trying to reconcile the Act with certain conflicting provisions of the PKPA and in entering and enforcing custody orders.

The proposed amendments to the UCCJA solve these problems. The new UCCJEA provides enhanced rules for custody determinations including the giving of priority to the home state as a ground for taking jurisdiction. The new Act provides for continuing exclusive jurisdiction in that the state which makes the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state and the new Act provides that the state with continuing exclusive jurisdiction is the only state that can modify a custody order unless it determines that another state has a more significant connection to the child. The new Act provides for emergency

temporary jurisdiction by allowing a court to take jurisdiction even if it is not the home state, where the child is present and has been abandoned or is subjected to or threatened with abuse or neglect.

The new Act also provides additional enforcement provisions including expedited enforcement hearings which require only that the petitioner show a certified copy of a custody determination to be enforced, evidence of a violation by the respondent and show the remedy sought. The new Act enhances court remedies by allowing courts to issue a warrant to take physical possession of the child where there is concern that the parent will flee with or harm the child. Moreover, the new Act requires courts to enforce custody determination of another state but precludes modification of those. Finally the new Act provides new remedies for civil enforcement of custody orders by allowing the prosecutor to locate a child and enforce the home state custody determination and by authorizing law enforcement officials to assist in locating a child and enforcing a custody determination.

In short, the new Act will provide uniformity of law, vitally necessary in a time when the mobility of the American public makes it imperative to have laws regarding child custody determinations uniform, consistent and enforceable from state to state.

I respectfully urge your favorable consideration and recommendation of this important proposed legislation. Thank you.

EXHIBIT 1
1/15/99
HB 24

Amendments to House Bill No. 24
1st Reading Copy

Requested by Representative Loren Soft

For the House Judiciary Committee

Prepared by Gregory Petesch
January 4, 1999

1. Page 15, line 19.
Strike: "child's parents"
Insert: "child and one parent"
Strike: "and any"
Insert: "or the child and a"

- END -

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

211 East Ontario Street, Suite 1300
Chicago, Illinois 60611
(312) 915-0195, Fax (312) 915-0187

HB 24

STATE AND COUNTY COMMISSIONERS
HOUSE NO. 1
DATE 3-4-99
BY HB 24

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- A SUMMARY -

INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. UCCJA was designed to discourage interstate kidnapping of children by their non-custodial parents. Before the UCCJA, it was a common practice for non-custodial parents to take children across state lines. They hoped to find sympathetic courts willing to reverse unfavorable custody orders. In too many cases, they were successful.

The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, the two acts tend to work together for the most part, but the differences do confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions). There have been provisions in the law of the states to permit interstate enforcement of child support orders since the 1950's. The Uniform Law Commissioners promulgated the Uniform Interstate Family Support Act to provide for even more effective interstate enforcement of child support orders in 1992. Interstate enforcement of child custody orders, therefore, remains a last frontier that needs to be crossed in order to make the law pertaining to children's needs complete.

In 1997, the Uniform Law Commissioners have promulgated a new **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**. It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. The UCCJEA replaces the UCCJA.

THE OBJECTIVE OF THE UCCJEA

The UCCJEA, the UCCJA and the PKPA are necessary because Americans are a mobile people who seldom stay in one state. Child custody disputes between parents, which arise when there is a divorce or when unmarried biological parents want to have custody adjudicated in a court, are impacted by that very mobility. When parents and children live and have lived in one state, the courts of that state may take jurisdiction over any child custody matter without question. But it is common for a parent to live in a different state from the one in which the other parent and the child live. More than one state may have the power to adjudicate a dispute between them. If more than one state does exercise its power, the competing decisions simply confuse, rather than conclude the dispute.

Child custody orders also have a quality that exaggerates the problem. They are modifiable orders, subject to reconsideration and change, until the children subject to them reach the age of majority. Circumstances may change between the parties governed by an order, and that may require a court to change the order - to modify it. A common scenario involves a child custody order issued in a state where the parents and the child lived together before the parents divorce each other. Then the custodial parent moves with the child to another state. If there is a need to modify the order, in which state can that modification take place? And if the second state purports to modify the order from the first state, which order is to be recognized and enforced in the first state and in every other state in the United States?

When there were no clear answers to these questions, the result was parental kidnapping of children to exploit the confusion. The UCCJEA, and the UCCJA and the PKPA before it, tries to answer these very important questions. It answers by establishing clear bases for taking jurisdiction and by providing rules that discourage competing child custody orders.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state; significant connection between state and parties to a child custody dispute; emergency jurisdiction when the child is present and the child's welfare is threatened; and, presence of the child in the event there is no other state with another sound basis for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

The original drafters of the UCCJA always thought that the home state of the child was the best state within which to find the information for making a custody decision in the best interests of the child. But it was also assumed that once a court took jurisdiction on any other acceptable basis, that state should be able to proceed without delaying to determine if some other state has home state status.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than any other jurisdictional ground, that it should always be the priority ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if the initial ground for taking jurisdiction ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remains there.

TEMPORARY EMERGENCY JURISDICTION

Under the UCCJA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" ground. If the child is present

in a state and there is evidence of abandonment or abuse to or mistreatment of the child, that state can take jurisdiction under the UCCJA.

The UCCJEA provides for temporary emergency jurisdiction, that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees has proved frustrating to parents and to the courts. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction, therefore, will surely be enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the interstate enforcement of any civil judgment. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing (the next judicial day unless impossible) for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court.

If there is danger to a child or if it appears that the child will be removed from the enforcing jurisdiction, a petition may also be filed for a warrant to take physical custody of the child along with a petition for an expedited proceeding. If the warrant issues, law enforcement officers will serve the warrant and obtain physical custody of the child.

As a last enforcement device, the UCCJEA gives prosecutors the power to enforce custody or visitation orders, and law enforcement officers the power to locate a child under instructions from prosecutors. These powers give parents and others who are the victims (along with children) of parental kidnapping the ability to seek help from those who enforce the criminal law. The effect is to provide a complete group of effective remedies.

CONCLUSION

It is not possible to cover all the details of the UCCJEA in a short summary. The best that it can do is point out the impact of major provisions. The UCCJEA does much more to update and streamline the original UCCJA, which was promulgated in 1968. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be uniformly adopted in all the states as soon as possible.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.

**Testimony of Hon. James C. Nelson
Justice and Commissioner, NCCUSL
in support of HB 24
March 4, 1999**

SENATE JUDICIARY COMMITTEE
JANUARY 2
3-4-99
HB 24

Mr. Chairman and members of the Committee:

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The importance of these amendments is highlighted by the problem which the original Act and this Act seek to resolve or prevent altogether. Each year in this Country hundreds of thousands of children are abducted by parents or family members and are concealed for the purpose of avoiding lawful custody and visitation orders and preventing contact with the other parent. A substantial number of these abductions cross state lines and often the abducting parent or family member takes the child to another jurisdiction in hopes of finding a more favorable forum in which to modify and eliminate the custody and visitation obligations imposed by the court in the child's home state. These cross-state, multi-jurisdiction abductions and court battles between parents and courts make it extremely difficult and extremely expensive for a parent to enforce a valid custody or visitation order in a foreign jurisdiction. Moreover, the stability of the family life and the education of the child, not to mention the life and work of at least one parent is completely disrupted. Often the child is placed in physical danger of abuse and neglect. Finally, from a judicial perspective, the courts, trying to sort out the various jurisdictional requirements of the present Act, have developed a body of inconsistent and often conflicting case law interpreting the Act, in trying to reconcile the Act with certain conflicting provisions of the PKPA and in entering and enforcing custody orders.

The proposed amendments to the UCCJA solve these problems. The new UCCJEA provides enhanced rules for custody determinations including the giving of priority to the home state as a ground for taking jurisdiction. The new Act provides for continuing exclusive jurisdiction in that the state which makes the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state and the new Act provides that the state with continuing exclusive jurisdiction is the only state that can modify a custody order unless it determines that another state has a more significant connection to the child. The new Act provides for emergency

temporary jurisdiction by allowing a court to take jurisdiction even if it is not the home state, where the child is present and has been abandoned or is subjected to or threatened with abuse or neglect.

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In short, the new Act will provide uniformity of law, vitally necessary in a time when the mobility of the American public makes it imperative to have laws regarding child custody determinations uniform, consistent and enforceable from state to state.

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